



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2003

Ms. Sara A. Hartin
Assistant City Attorney
City of Killeen
101 N. College
Killeen, Texas 76541

OR2003-6067

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186703.

The City of Killeen Animal Control Department (the "department") received a request for any records regarding a specified dog attack. You have provided the requestor with a redacted copy of the responsive Animal Bite Report. However, you claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Section 552.108(b)(2) excepts from disclosure "an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]"

The department asserts that the "Animal Bite Report" and the "Report of Severe Animal Bite Or Attack" are records completed by the department, and that the department qualifies as a law enforcement agency for purposes of section 552.108. We note, however, that section 552.108 is generally not applicable to the records of an agency whose function is essentially regulatory in nature. *See* Open Records Decision No. 199 at 1 (1978). We therefore conclude that the department may not withhold the information contained in

Exhibits C and D under section 552.108. *See also* Open Records Decision No. 287 at 2 (1981) (law enforcement exception not applicable to record of division of police department that provides social services).

Additionally, you claim that the highlighted driver's license information in Exhibit C is subject to section 552.130 of the Government Code. However, this section excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The highlighted driver's license information in Exhibit C was not issued by an agency of this state. Consequently, section 552.130 of the Government Code is inapplicable to this information.

Next, you assert that Exhibit E is subject to section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code.¹ Section 801.353 provides in pertinent part:

(a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian's client.

(b) A veterinarian may not be required to release information concerning the veterinarian's care of an animal, except on the veterinarian's receipt of:

(1) a written authorization or other form of waiver executed by the client; or

(2) an appropriate subpoena.

You indicate that Exhibit E was created by a veterinarian concerning a client's dog. Based on your arguments and our review of the submitted information, it appears that Exhibit E is a veterinary record subject to the chapter 801 of the Occupations Code. Thus, Exhibit E may be released only in accordance with section 801.353 of the Occupations Code.

However, we note that section 801.004 of the Occupations Code provides in relevant part that:

[Chapter 801] does not apply to:

...

¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes.

(7) a person who is engaged in a recognized state-federal cooperative disease eradication or control program or an external parasite control program while the person is performing official duties required by the program[.]

You assert that “some of the information contained in Exhibit ‘E’ does not pertain to a state-federal cooperative disease eradication or control program.” Based on our review of the submitted information, it appears that all of Exhibit E may have been created by a veterinarian engaged in a disease eradication or control program as described in section 801.004(7). Thus, if Exhibit E was in fact created by a veterinarian engaged in a program as described in section 801.004(7), then Exhibit E is not confidential under section 801.353.

Further, you claim that pages 3, 5, and 6 of Exhibit E are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. Section 826.0211 provides in pertinent part that “[i]nformation that is contained in a rabies vaccination certificate that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code.” Health & Safety Code § 826.0211(a). The only exception to this confidentiality is that the information may be disclosed “to a governmental entity for purposes related to the protection of public health and safety.” Health & Safety Code § 826.0211(b).

Upon review of the documents in question, we agree that pages 3 and 6 of Exhibit E are rabies vaccination certificates. In this instance, the requestor is not a governmental entity, and therefore, section 826.0211(b) is inapplicable. Therefore, the department must withhold the information in the vaccination certificates that identifies or tends to identify the owners of the vaccinated animal under section 552.101 of the Government Code in conjunction with section 826.0211(a) of the Health and Safety Code. We have marked the certificates accordingly.

However, page 5 of Exhibit E is not itself a rabies vaccination certificate. We conclude that section 826.0211 does not apply to a record other than a rabies vaccination certificate as stated in the plain language of the provision. Accordingly, we conclude that page 5 of Exhibit E is not made confidential by section 826.0211 of the Health and Safety Code, and thus may not be withheld under section 552.101 of the Government Code on that basis.

In summary, we conclude that: 1) the department must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 826.0211(a) of the Health and Safety Code; 2) if the remainder of Exhibit E was not created by a veterinarian engaged in a program as described in section 801.004(7) of the Occupations Code, the remainder of Exhibit E may be released only in accordance with

section 801.353 of the Occupations Code; 3) if the remainder of Exhibit E was created by a veterinarian engaged in a program as described in section 801.004(7) of the Occupations Code, the remainder of Exhibit E must be released; and 4) Exhibits C and D must be released in their entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 186703

Enc: Submitted documents

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